

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SANDY J. BATTISTA,
Plaintiff,
vs.
DUANE MACEACHERN, et al.,
Defendant's.

}
CIVIL ACTION
NO#

PLAINTIFF'S MOTION TO WAIVE FILING FEES AND TO BE
ALLOWED TO PROCEED IN FORMA PAUPERIS

Plaintiff, Sandy J. Battista, acting pro-se in the above entitled matter, respectfully requests that this Court waive the filing fees in this action and allow her to proceed in forma pauperis. As grounds thereto, plaintiff states the following:

- 1) That plaintiff has been in the Department of Correction since December of 1982 to date. Whereas, she has been unable to engage in gainful employment.
- 2) That on 5/29/01, plaintiff was discharged from her criminal sentences of incarceration, though remains in custody pursuant to an Order of the Worcester County Superior Court civilly committing her under G.L. Ch.123A, §14(d), as amended St.1999. See Commonwealth vs. Sandy J. Battista, WORCV01-1108-C.
- 3) That the fee paying requirement under the PLRA pertains only to "prisoners," not those persons, like the plaintiff, who are "civilly" committed under Ch.123A. See Perkins vs. Hedricks, 340 F.3d 582, 583 (8th Cir. 2003); Troville vs. Venz, 303 F.3d 1256, 1559-60 (11th Cir. 2002); Yoder vs. Patla, 234 F.3d 1275 (7th Cir. 2000); Page vs. Torrey, 201 F.3d 1136, 1139-40 (9th Cir. 2000); see also King vs. Greenblatt, 53 F.Supp.2d 117, 137-

38 (D.Mass. 1999).

4) Having been in custody, both criminally, as well as currently civilly, for the last 20+ years, plaintiff has no real estate, stocks, bonds, notes, automobiles, etc., except for a small inheritance from her fathers recent passing.

5) Plaintiff is currently employed at the Treatment Center, at the rate of \$1.00 a day, seven days a week.

6) Plaintiff receives no other sources of monies from either family or friends, other than what is reflected herein above.

7) Plaintiff states that the United States Supreme Court in Adkin vs. Dupont, 335 U.S. 331, 339 (1948), has recognized that "litigants need not give up their last dollar...and thus make themselves and their dependents wholly destitute, to be granted *in forma pauperis* status.." See also Souder vs. McGuire, 516 F.2d 820, 824 (3rd Cir. 1975); In re Smith, 600 F.2d 714 (8th Cir. 1979).

8) As of date, this Court, along with the First Circuit Court of Appeals has determined this plaintiff to be indigent. See attached.

9) Plaintiff's financial status has not changed as of date since the Court's determination of her indigent status, as reflected by the attached.

10) Plaintiff is unable to financially afford the cost of the filing fees in this action without depriving herself of 'daily' personal/legal necessities. See attached Affidavit of the Plaintiff, Sandy J. Battista, #M-15930.

11) Plaintiff further attaches her Application to Proceed

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Without Prepayment of Fees and Affidavit in support.

WHEREFORE, it is respectfully prayed that this motion be ALLOWED, and this Court's order issue.

Dated: 4/12/04.

Respectfully submitted,


Sandy J. Battista, #M-15930
Plaintiff/Pro-se
Mass. Treatment Center
30 Administration Rd.
Bridgewater, Mass. 02324

United States District Court
District of Massachusetts

Notice of Electronic Filing

The following transaction was received from Castles, Martin entered on 1/14/2004 at 4:30 PM EST and filed on 1/14/2004

Case Name: Battista v. Conte, et al

Case Number: 4:02-cv-40181

Filer:

WARNING: CASE CLOSED on 07/24/2003

Document Number:

Docket Text:

Judge Nathaniel M. Gorton : Electronic ORDER entered granting [20] Motion for Leave to Appeal in forma pauperis. (cc/cl) (Castles, Martin)

The following document(s) are associated with this transaction:

4:02-cv-40181 Notice will be electronically mailed to:

4:02-cv-40181 Notice will not be electronically mailed to:

Sandy J. Battista
Massachusetts Treatment Center
30 Administration Road
Bridgewater, MA 02324-3230

Annette C. Benedetto
Department of Attorney General
McCormack Building
One Ashburton Place
Boston, MA 02208

United States Court of Appeals For the First Circuit

No. 03-2220

SANDY J. BATTISTA, F/K/A DAVID MEGARRY,
Plaintiff, Appellant,

v.

JOHN J. CONTE, ET AL.,
Defendants, Appellees.

ORDER OF COURT

Entered: December 19, 2003

Since appellant, as a civilly committed patient at the Massachusetts Treatment Center, is not a prisoner under the terms of the Prison Reform Litigation Act, see Perkins v. Hedricks, 340 F.3d 582, 583 (8th Cir. 2003); Troville v. Venz, 303 F.3d 1256, 1559-60 (11th Cir. 2002); Yoder v. Patla, 234 F.3d 1275 (7th Cir. 2000); Page v. Torrey, 201 F.3d 1136, 1139-40 (9th Cir. 2000), the order of this court, dated September 22, 2003, denying appellant's request to be afforded in forma pauperis status is vacated.

Appellant's motion to be allowed to file his appeal in forma pauperis is denied, without prejudice to his seeking such status in the district court. See Fed. R. App. P. 24(a)(1).

By the Court:

Richard Cushing Donovan, Clerk.

cc: Sandy J. Battista
Annette C. Benedetto, Esq.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SANDY J. BATTISTA,

Plaintiff,

v.

Civil Action

FORENSIC HEALTH SERVICES INC.,

Defendant.

No. 03-11161-NG

ORDER ON MOTION TO WAIVE FILING FEES AND COSTS

Having considered the plaintiff's Motion to Waive Filing Fees and Costs under 28 U.S.C. § 1915;

- In accordance with Fed. R. Civ. P. 5(e), the clerk assigned this action Civil Action No.03-11161-NG.

It is ORDERED that:

- The motion to waive filing fees and costs is GRANTED.
- It is FURTHER ORDERED that the clerk issue summons and the United States marshal serve a copy of the complaint, summons and this order upon the defendant(s) as directed by the plaintiff with all costs of service to be advanced by the United States.
- It is FURTHER ORDERED that the complaint be dismissed pursuant to 28 U.S.C. § 1915(e) without further notice after thirty-five (35) days from the date of this Order, unless before that time plaintiff shows good cause, in writing, why this case should not be dismissed for the reasons stated in the accompanying memorandum.
- It is FURTHER ORDERED that the application is DENIED for the reasons stated in the accompanying memorandum.

12/23/03
DATE

/s Nancy Gertner
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SANDY J. BATTISTA, }
Plaintiff, }
vs. } CIVIL ACTION
DUANE MACEACHERN, et al., } NO#
Defendant's. }

AFFIDAVIT OF THE PLAINTIFF, SANDY J. BATTISTA, #M-15930

I, Sandy J. Battista, on oath deposes and states as follows:

1) That I am the plaintiff in the above-entitled action, having personal knowledge of all facts and circumstances in this matter makes this affidavit in support of my pro-se Motion to Waive Filing Fees and to be Allowed to Proceed in Forma Pauperis.

2) That being civilly committed, in the care and custody of the Department of Correction, I am required to follow all rules, regulations, policies and procedures promulgated by the Department of Correction.

3) That the Department of Correction has a system-wide policy defining "indigency," administratively, if upon request for a waiver of fees or costs, an inmate/resident does not have more than \$10.00 in his account for the past sixty days. See Complaint, exhibit-7(at pages 3-4)(§481.06(a)(b)).

4) As I have more than \$10.00 in my account, administratively I am deemed not indigent according to Department of Correction policy, and as such, must provide for all my own weekly/monthly

personal/legal necessities.(I.e.), any and all weekly personal hygiene supply's: soap, toothpaste, toothbrush, shampoo, creme rinse, hair gel, body lotion, body powder, razors, shaving creme, after shave lotion, combs/brush, dental floss, deoderant; any and all weekly personal necessities: paper, pens/pencils, envelopes, stamps, manilla envelopes, typewriter paper, type-writer ribbons/corrective ribbons, laundry detergent, medical co-payments(\$3.00 per each consultation), hair cuts(\$1.50 each hair cut); and any and all necessary clothing: jeans, dress pants, dress shirts, t-shirts, underwear, socks, shoes, sneakers, shower shoes, slippers, sweatpants/shirts, shorts, bathrobes, pajamas, belt, seaters, winter/summer coat, etc..

5) That from the above listed weekly/monthly personal/legal necessities, my weekly expenses are approximately: \$10-00 to \$15.00 in personal hygiene supply's; \$5.00 to \$10.00 in personal necessities; and \$25.00 to \$50.00 every 90 days in clothing purchases.

6) That I am also currently involved in approximately six non-related on-going civil complaints against the Department of Correction, which on occasions require additional costs in postage and certified mailing fees.

7) That I am unable to financially afford the costs of the filing fee in this matter without depriving myself of the above listed weekly/monthly personal/legal necessities, and additionally, interfering with the prosecution of on-going non-related civil matters.

8) That without this Court's waiver of fees, I will be left with the choice of either paying filing fees, or depriving

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myself of the above personal/legal necessities.

Signed under the pains and penalties of perjury this
12th day of April, 2004.



Sandy J. Battista, #M-15930
Plaintiff/Pro-se

United States District CourtDISTRICT OF MassachusettsSANDY J. BATTISTA
Plaintiff**APPLICATION TO PROCEED
WITHOUT PREPAYMENT OF
FEES AND AFFIDAVIT**

V.

DUANE MACEACHERN, et al.,
Defendant

CASE NUMBER:

I, Sandy J. Battista

declare that I am the (check appropriate box)

 petitioner/plaintiff/movant other

In the above-entitled proceeding; that in support of my request to proceed without prepayment of fees or costs under 28 USC. §1915 I declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief sought in the complaint/petition/motion.

In support of this application, I answer the following questions under penalty of perjury:

1. Are you currently incarcerated?: Yes No (If "No" go to Part 2)

If "Yes" state the place of your incarceration _____

Are you employed at the institution? _____ Do you receive any payment from the institution? _____

Have the institution fill out the Certificate portion of this affidavit and attach a ledger sheet from the institution(s) of your incarceration showing at least the past six months' transactions.

2. Are you currently employed? Yes No

a. If the answer is "Yes" state the amount of your take-home salary or wages and pay period and give the name and address of your employer.

\$1.00 a day, seven days a week.

b. If the answer is "No" state the date of your last employment, the amount of your take-home salary or wages and pay period and the name and address of your last employer.

3. In the past 12 twelve months have you received any money from any of the following sources?

- | | | |
|---|------------------------------|--|
| a. Business, profession or other self-employment | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| b. Rent payments, Interest or dividends | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| c. Pensions, annuities or life Insurance payments | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| d. Disability or workers compensation payments | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| e. Gifts or inheritances | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| f. Any other sources | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If the answer to any of the above is "Yes" describe each source of money and state the amount received and what you expect you will continue to receive.